

Arresting a Ship in Ireland – Dillon Eustace

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Arresting a Ship in Ireland

1. Introduction

The 1952 Arrest Convention (“1952 Convention”) was given the force of law in Ireland by the passing of the Jurisdiction of the Courts (Maritime Conventions) Act, 1989 (“the 1989 Act”). The 1989 Act was passed for the purposes of the Convention and left the existing law in relation to ships to which the Convention does not apply unrepealed namely the Courts of Admiralty (Ireland) Acts, 1867 and 1876. We now have a situation in Ireland whereby there is very old legislation governing non Convention ships and relatively recent legislation covering Convention ships.

Ireland operates under a common law system and the law of arrest in Ireland is somewhat similar to the law of arrest in England. By way of background when Ireland implemented the 1952 Convention under the 1989 Act it appended the Convention to the Act.

2. Procedure to Arrest

The 1989 Act implements the 1952 Convention and Article 1 of the 1952 Convention sets out the type of claims which are maritime claims within the meaning of Article 1. In Ireland proceedings are brought in rem that being on behalf of the vessel. Claims are categorised into maritime liens and statutory liens.

A practice has built up among lawyers in Ireland where a warning letter is usually sent to the owners or the vessel’s agent in advance of the application to arrest the vessel. This is not a legislative requirement. In order to arrest a vessel a Summons is issued in the High Court in Ireland. In addition to that an Affidavit is filed in the High Court setting out the basis of the claim, exhibiting the bill of lading, charterparty and any other relevant document to assist the application to arrest. The Affidavit can be sworn by either the arresting party or their solicitor.

The application is made Ex-Parte to the Master of the High Court or the Admiralty Judge. No arrest order will be granted by the court unless it is satisfied that the vessel is within Irish waters. In addition to that and prior to the arrest order being granted the arresting party must give an undertaking that they will be responsible for Admiralty Marshal’s expenses. These expenses are made up of the fee due to the ship keeper who remains on board while the vessel is under arrest and any other expenses incurred as a result of the arrest order including moving the vessel and so forth.

Once an order is made by the High Court a vessel will remain under arrest until such time as it is released by court order. On payment into court of appropriate security the vessel will be released. In practice an appropriate letter of guarantee from a recognised bank or a letter of undertaking from a recognised P&I Club is accepted by any claimant and on consent then an application will be made to court for the release of the vessel.

3. Sistership Arrest

Under the 1989 Act on the basis that the 1952 Convention was appended to that particular piece of legislation, Sistership Arrest in Ireland is permissible. However, this power of arrest of a sistership is confined to ships of Convention countries only. This was established in the Irish case of the Marshal Gelovani [1995] 11R159 and subsequently in the Irish case of the Kapitan Labunets [1995] 11R164.

4. Jurisdiction

Once an arrest order has been obtained from the Irish Courts it is up to the arresting party then to serve the Plenary Summons on the arrested vessel. Once the Plenary Summons has been served on the vessel the Irish Courts have jurisdiction in relation to the matter. Obviously where both parties agree to submit to another jurisdiction or where there is a binding arbitration clause the Irish courts would not have jurisdiction.

5. Sale of a Vessel

If appropriate security is not forthcoming from the registered owners of the arrested vessel there is a facility whereby an application can be made to court to have the vessel sold. Terms and conditions of sale are drawn up and once the court order for sale is made the vessel is sold by the Admiralty Marshal "as is". The Admiralty Marshal appoints an auctioneer who handles the sale of the vessel. In addition to that the Admiralty Marshal appoints an expert who carries out an appraisal of the vessel and this figure constitutes the reserve price. If the reserve price is reached at the auction the vessel is sold. The reserve figure is not disclosed to the auctioneer until the auction commences and the auctioneer during the course of the auction informs bidders when the vessel is actually on the open market.

The proceeds of sale are then lodged in court and a hearing then takes place in relation to the priorities of claims. It will be necessary for each interested party including the arrested party to have obtained the Judgment against the vessel in circumstances where no Appearance to the proceedings has been entered by the registered owner. The purchaser is responsible for the auctioneer's fees and it is usually 5% of the sale price. In addition there is a duty payable to the court of 10% of the sale price which comes out of the proceeds of sale. As one would expect there is an order of priority of claims with the Admiralty Marshal's expenses ranking ahead of any other claim.

6. Future of Arrest

The International Convention on the Arrest of Ships, 1999 ("the 1999 Arrest Convention") clarifies the wording of the 1952 Convention applicable to recent practice and modifies the 1952 Convention in order to make it consistent with other International Conventions. It includes additional categories of maritime claims which did not previously exist in the 1952 Arrest Convention for instance Article 1 (e) of the 1999 Convention includes "damage or threat of damage caused by a ship to the environment, coastline or related interest ...". This is particularly relevant in view of the number of environmental disasters in the last number of years.

In addition the 1999 Arrest Convention also includes that a ship may be arrested for the purpose of obtaining security notwithstanding that there may be a jurisdiction clause or arbitration clause operating.

At the moment there is no precise indication in Ireland as to when the 1999 Arrest Convention will be given the force of law and it appears that Ireland is adopting a wait and see approach as to whether the 1999 Arrest Convention obtains more international recognition, perhaps at that stage Ireland will alter it's stance.

Date: September, 2007

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